

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH CORSETTI, # 140643,

Plaintiff,

v.

Case Number: 10-cv-12386
Honorable Arthur J. Tarnow

THE HONORABLE
JAMES M. BIERNAT, *et. al.*,

Defendants.

**OPINION AND ORDER DENYING SECOND MOTION
FOR RECONSIDERATION, DENYING MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT, AND DISMISSING THE AMENDED COMPLAINT**

I. INTRODUCTION

This is a prisoner civil rights case filed under 42 U.S.C. § 1983. Pending before the Court is Plaintiff Joseph Corsetti's "Second Motion for Reconsideration," filed on April 7, 2011. Plaintiff filed his Civil Rights Complaint on June 17, 2010, seeking damages against The Honorable James M. Biernat, Assistant Prosecutor Margaret DeMuynck, and Prosecutor Eric Smith. On July 21, 2010, the Court summarily dismissed the Complaint, for failure to state a claim. *Corsetti v. Biernat*, No. 10-cv-12386, 2010 WL 2869456 (E.D. Mich. July 21, 2010). On March 25, 2011, the Court denied Plaintiff's First Motion for Reconsideration. *Corsetti v. Biernat*, No. 10-CV-12386, 2011 WL 1134990 (E.D. Mich. Mar. 25, 2011). Approximately four months after the Court summarily dismissed Plaintiff's Civil Rights Complaint, Plaintiff filed an Amended Complaint, which is also pending before the Court. The Court construes Plaintiff's Amended Complaint as a motion for leave to file an amended Complaint. For the reasons stated below, the Court denies Plaintiff's Motions and dismisses the Amended Complaint.

II. DISCUSSION

A. Amended Complaint Dismissed

To the extent that Plaintiff seeks to amend his Complaint in order to cure a defect in his initial pleadings, his Motion must be denied given the Court's dismissal of his Civil Rights Complaint. The Court may not permit Plaintiff to amend his Complaint to defeat summary dismissal. *See Baxter v. Rose*, 305 F.3d 486, 488-89 (6th Cir. 2002) (citing *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997)); *see also Clayton v. United States Dep't of Justice*, 136 F.App'x 840, 842 (6th Cir. 2005) (same). Therefore, if Plaintiff is requesting leave to amend his Complaint, then he cannot do so; Plaintiff's Motion comes too late as the case is closed.

B. Second Motion for Reconsideration Denied

A motion for reconsideration must be filed within fourteen days after entry of the Court's Judgment or Order. *See* E.D. Mich. LR 7.1(h)(1). Plaintiff signed his Motion on March 30, 2011—five days after the Court's Judgment denying his First Motion for Reconsideration. The Court considers Plaintiff's Second Motion for Reconsideration timely.

However, Plaintiff's Motion fails to satisfy the requirements for reconsideration under E.D. Mich. LR 7.1(h)(3). First, under E.D. Mich. LR 7.1(h)(3), Plaintiff has not shown a "palpable defect by which the court . . . [has] been misled" or shown "that correcting the defect will result in a different disposition of the case," as required by the local rule. The Court properly denied his First Motion for the reasons stated more fully in its March 25, 2011 Opinion and Order. A motion for reconsideration which presents issues already ruled upon by the district court, either expressly or by reasonable implication, will not be granted. *See Hence v. Smith*, 49

F.Supp.2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F.Supp. 951, 952 (E.D. Mich. 1997). Plaintiff has not met his burden.

Likewise, under Federal Rule of Civil Procedure 60(b)(6), and as stated in its March 25, 2011 Opinion and Order denying Plaintiff's First Motion for Reconsideration, Plaintiff has failed to offer any arguments which the Court has not already previously considered and rejected in its prior Orders. As discussed in the Court's previous Orders, his Civil Rights Complaint was properly dismissed for failure to state a claim upon which relief may be granted.

III. CONCLUSION

Accordingly, **IT IS ORDERED** that Plaintiff's "Second Motion for Reconsideration" [dkt. # 13] is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's motion for leave to file an amended Complaint is **DENIED** and the "Amended Complaint" [dkt. # 10] is **DISMISSED**.

SO ORDERED.

S/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge

Dated: May 25, 2011

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on May 25, 2011, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary